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In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA, PETITIONER

v.

S.A. EMPRESA DE VIACAO AEREA RIO GRANDENSE
(VARIG AIRLINES)

UNITED STATES OF AMERICA, PETITIONER

v.

EMMA ROSA MASCHER, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the United States is liable under the Federal Tort Claims Act as a "private individual under like circumstances" for the Federal Aviation Administration's alleged failure to discover a safety defect while carrying out its regulatory duty of certifying the airworthiness of aircraft in commercial aviation.

2. Whether a suit against the United States alleging that the FAA negligently certified an aircraft's design as complying with minimum safety standards as part of its efforts to regulate compliance with those standards is barred as a claim based upon the performance of a "discretionary function" within the meaning of 28 U.S.C. 2680(a).

3. Whether a suit against the United States alleging that the FAA negligently inspected and certified the design of a lavatory in an aircraft is barred as a "claim arising out of * * * misrepresentation" within the meaning of 28 U.S.C. 2680(h).

PARTIES TO THE PROCEEDING

Respondents not named in the caption are listed in Appendix F, *infra*, 18a-24a.

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**PETITION FOR A WRIT OF CERTIORARI TO THE
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NINTH CIRCUIT**

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-7a) is reported at 692 F.2d 1205.¹ The findings of fact and conclusions of law of the district court (App. B, *infra*, 8a-13a) are not reported.

¹ This opinion was originally handed down on October 8, 1982. It was subsequently reissued on October 26, 1982, to include in the caption *Emma Rosa Mascher, et al. v. United States*.

JURISDICTION

The judgments of the court of appeals in these consolidated cases were entered on October 8, 1982 (App. D, *infra*, 16a; App. E, *infra*, 17a). On December 28, 1982, Justice Rehnquist extended the time within which to file a petition for a writ of certiorari to and including February 11, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. 2674 provides, in pertinent part:

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances * * *.

28 U.S.C. 2680 provides, in pertinent part:

The provisions of this chapter and section 1346(b) of this title [conferring jurisdiction on the district courts] shall not apply to—

(a) Any claim * * * based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

* * * *

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights * * *.

STATEMENT

1. In the Federal Aviation Act of 1958, 49 U.S.C. (& Supp. IV) 1301 *et seq.*, Congress has directed the Secretary of Transportation "to promote safety of flight of civil aircraft" by prescribing "minimum standards governing the design, materials, workmanship, construction, and performance of aircraft * * *." 49 U.S.C.

1421(a) and (1). At the same time, Congress has imposed a primary duty on "every person [in the aviation industry] engaged in operating, inspecting, maintaining, or overhauling equipment to observe and comply" with the statutory and administrative standards prescribed by the Secretary. 49 U.S.C. 1425(a). See also 49 U.S.C. 1421(b). In order to monitor adequately the aviation industry's compliance with these safety standards, Congress has created a multi-step process for certifying the safety of aircraft, and the Federal Aviation Administration ("FAA"), acting as the designee for the Secretary, has promulgated extensive regulations establishing minimum standards that must be satisfied by the designer or manufacturer of an airplane at each stage in the certification process. Each step culminates in the issuance of a certificate by the FAA; it is unlawful to operate an airplane that does not have a current "airworthiness certificate," which is the final stage in the process. 49 U.S.C. (& Supp. IV) 1430(a).

Before introducing a new type of airplane, the manufacturer must first obtain a "type certificate," which involves FAA approval of the basic design of the aircraft. 49 U.S.C. 1423(a); 14 C.F.R. 21.11-21.53. The manufacturer supplies the FAA with blueprints and/or design drawings, which FAA employees examine for compliance with minimum safety standards. Through this process, which may take years to complete, a basic design is approved and a type certificate is issued. See generally National Academy of Sciences, Committee on FAA Airworthiness Certification Procedures, *Improving Air Safety* 19-20 (1980).

The manufacturer then builds a prototype of the aircraft and applies for a "production certificate." 49 U.S.C. 1423(b); 14 C.F.R. 21.131-21.165. This certificate authorizes the manufacturer to produce copies of the prototype so long as they are identical in all respects to the "type" approved. The manufacturer must

supply detailed information regarding materials used and production methods employed. 14 C.F.R. 21.143. In addition, FAA employees inspect the prototype and test fly it "to determine compliance with the applicable [safety standards]." 14 C.F.R. 21.157.

After the manufacturer receives a production certificate, and assuming no limitations are imposed on the certificate, it may begin mass production of the approved aircraft. The manufacturer must, however, obtain an airworthiness certificate for each aircraft that is assembled. This requires that the aircraft be inspected to determine whether it conforms to the prior certifications and the minimum safety standards. 49 U.S.C. 1423(c); 14 C.F.R. 21.171-21.199.²

A Class I Export Certificate of Airworthiness may be obtained from the FAA upon request. 14 C.F.R. 21.321-21.339. Such a certificate informs a foreign government that a particular aircraft exported from the United States complies with the approved design and is in condition for safe operation at the time of export.

In light of the extensiveness and complexity of the safety standards (14 C.F.R. 23.1-23.1589) and the large number of aircraft requiring certification, the FAA is unable to monitor or inspect directly every aspect of every design, prototype or assembled aircraft. Accordingly, consistent with the statutory scheme (49 U.S.C. 1425(a)), the regulations impose upon each applicant an obligation, *inter alia*, to "make all inspections and tests necessary to determine * * * [c]ompliance with the applicable airworthiness * * * requirements." 14 C.F.R. 21.33(b) and (1). In addition, the vast majority of the

² An additional certificate is required for aircraft that are altered by the introduction of a major change in the type design. 14 C.F.R. 21.113. In order to obtain a "supplemental type certificate," the applicant "must show that the altered product meets the applicable airworthiness requirements * * *." 14 C.F.R. 21.115(a).

FAA's inspections are performed by "designated engineering representatives," who typically are employees of the manufacturer or operator of the aircraft but are licensed by the FAA. 14 C.F.R. 183.29. For each aircraft, literally dozens of inspections are conducted by different individuals with engineering expertise in a particular area—some federal employees but most not.³ The FAA-signed certificate does not indicate who conducted the inspection of any particular aspect of the aircraft.

2. This case involves the crash of a Boeing 707 airplane, which was designed, manufactured, tested, inspected and assembled by the Boeing Company (App. B, *infra*, 9a). The Civil Aeronautics Agency ("CAA"), the predecessor of the Federal Aviation Administration, inspected the designs, plans, specifications and performance data for the Boeing 707 aircraft and issued a type certificate in 1958, 15 years prior to the accident at issue here (*ibid.*). The airplane was sold by Boeing for domestic use to Seaboard Airlines, and in 1969, Seaboard sold the plane to respondent Varig Airlines, a Brazilian commercial air carrier (*ibid.*).⁴ At that time, the airplane was removed from the United States Civil Aircraft Registry and placed on the Brazilian registry (14 C.F.R. 21.335(e)(1)). Consequently, any FAA airworthiness certificate previously issued to the airplane became invalid and, indeed, was no longer required so long as the plane did not fly within the airspace of the United States (*ibid.*). The ultimate responsibility for

³ The nonemployee representatives are not subject to any direct FAA control, but there are spot checks of their work. See generally Dilk, *Negligence of FAA Administration Delegates Under the Federal Tort Claims Act*, 42 J. Air L. & Com. 575, 583 (1976).

⁴ Apparently, an Export Certificate was never requested by or issued to respondent Varig or the appropriate Brazilian agency.

regulating the airworthiness of the airplane then rested with the state of registry (in this case, Brazil). See 49 U.S.C. 1401 and 1508(b).

On July 11, 1973, the Boeing 707 airplane crashed while on a commercial flight from Rio de Janeiro to Paris, France (App. B, *infra*, 8a). A few minutes before the scheduled landing at Orly Airport, a fire began in one of the aft lavatories (App. A, *infra*, 2a). Thick, black smoke quickly filled the entire cabin and cockpit area and caused the airplane to make a crash landing into a field a few miles from the airport (*ibid.*). All but 11 of the 135 persons on board the plane died from asphyxiation caused by inhaling toxic gases (*ibid.*). A post-impact fire consumed most of the air fuselage, including the aft lavatory structure and most of the floor and cargo area beneath and forward of the aft lavatories.

3. Following the accident, two consolidated actions were filed against the United States under the Federal Tort Claims Act, 28 U.S.C. (& Supp. V) 2671 *et seq.*, in the United States District Court for the Central District of California. The *Varig* suit involved a claim for damages for the destroyed Boeing 707. The *Mascher* suit involved claims for wrongful death brought by families and personal representatives of 62 passengers.⁵

⁵ Representatives of the passengers brought suit in New York state court against Boeing Company, Seaboard World Airlines, and five subcomponent manufacturers. These suits were settled in 1977.

Varig Airlines also brought a separate action against Boeing Company and a subcomponent manufacturer in the United States District Court for the Central District of California. The district court granted summary judgment for the defendants and the court of appeals affirmed. *Varig v. Boeing*, 641 F.2d 746 (9th Cir. 1981); *S.A. Empresa De Viacao Aerea Rio Grandense (Varig Airlines) v. Walter Kidde & Co.*, 692 F.2d 1205 (9th Cir. 1982).

Respondents claimed that the pre-impact fire originated in the towel disposal area located in the sink unit of one of the aft lavatories of the airplane and was caused either by an electrical malfunction or by passenger carelessness. They alleged that the towel disposal area was not capable of containing fire as required by FAA regulations and that the FAA was negligent in its inspection of the plane and issuance of a type certificate for the Boeing 707 in 1958—15 years prior to the crash.⁶

The district court entered summary judgment for the United States (App. B, *infra*, 8a-13a). The court first noted that the Federal Tort Claims Act subjects the United States to liability only where a private person would be liable in "like circumstances" (*id.* at 10a), and it held that California law does not recognize a duty giving rise to liability in tort for inspection and certification activities (*id.* at 10a). The court further held that the FAA's inspection and certification responsibilities were regulatory functions, not operational services, and "[did] not give rise to an actionable duty in tort under California law" that extended to respondents (*ibid.*). Specifically, the court ruled that "the benefits of [the FAA's inspections] flow to the general public at large and not to any individual so as to render the United

⁶ The applicable regulation, CAA § 4b.381 and (d), provided (quoted in App. A, *infra*, 3a):

Cabin Interiors. All compartments occupied or used by the crew or passengers shall comply with the following provisions.

* * * * *

All receptacles for used towels, papers and waste shall be of fire-resistant material, and shall incorporate covers or other provisions for containing possible fires.

No identical provision exists in the FAA's regulations, but they do require that each compartment to be used by the crew or passengers must be made of materials that are flame resistant. 14 C.F.R. 23.853.

States liable for negligence in their performance" (*id.* at 11a) and that the FAA's actions did not relieve respondent Varig of the primary responsibility for the safety of its airplane (*id.* at 12a).

Although the district court found no basis for imposing liability on the government based on any tort theory, it nevertheless held that respondents' claims were barred by the discretionary function and misrepresentation exceptions to the Federal Tort Claims Act, 28 U.S.C. 2680(a) and (h) (App. B, *infra*, 12a).

4. The court of appeals reversed (App. A, *infra*, 1a-7a). Employing reasoning similar to that adopted by the same panel in its opinion issued the same day in *United Scottish Insurance Co. v. United States*, 692 F.2d 1209 (9th Cir. 1982), the court held that the United States could be held liable under the good samaritan doctrine, as set forth in Sections 323 and 324A of the *Restatement (Second) of Torts* (1965). In the court's view, the government had performed a "service" to respondents within the meaning of the doctrine because "the United States, through the F.A.A., has voluntarily undertaken the inspection and certification of all civilian aircraft" (App. A, *infra*, 5a). The court also concluded that the reliance element of the doctrine had been satisfied because, having issued regulations "designed to insure optimum safety," the government "should expect that members of the public will rely on the proper performance by the F.A.A. of its duty to inspect and certify" (*ibid.*). The court made no mention of the significance, if any, of the fact that all of the passengers on the aircraft were foreign residents or that respondent Varig had never attempted to obtain an export certificate of airworthiness.

Relying in part on *Neal v. Bergland*, 646 F.2d 1178 (6th Cir. 1981), cert. granted, No. 81-1494 (May 24, 1982), the court of appeals ruled that the misrepresentation exception did not bar this action because "[re-

spondents'] claims * * * arise from the negligence of the inspection rather than from any ensuing misrepresentation contained in the resultant certificate" (App. A, *infra*, 6a). Finally, the court of appeals rejected the discretionary function exception as a bar to this suit because "[t]he kind of discretion contemplated by the exemption clause does not exist in certifying compliance with F.A.A. safety regulations" (*id.* at 6a-7a).

Judge Chambers' concurring opinion in *United Scottish Insurance Co.* also applied to this case (692 F.2d at 1212). Judge Chambers observed that "[m]ost of us thought when the Federal Tort Claims Act was passed that the discretionary exception * * * would preclude recovery on the facts of the two cases we decide today, but the developing law seems to have overtaken us."

REASONS FOR GRANTING THE PETITION

These two cases present important questions identical to those presented in our petition for a writ of certiorari in *United States v. United Scottish Insurance Co.*, No. 82- (filed Feb. 11, 1983).⁷ All three cases were decided on identical grounds by the same panel of the Ninth Circuit on the same day. In each case the court of appeals held that the United States is liable under the Federal Tort Claims Act for injuries allegedly caused by the crash of airplanes inspected by FAA employees and negligently certified as airworthy. Obviously, the proper disposition of this petition is dependent on this Court's decision on our petition in *United Scottish Insurance*. Accordingly, this petition should be held pending disposition of the petition in that case.

⁷ We are providing counsel for respondents with a copy of our petition in *United Scottish Insurance*.

CONCLUSION

The petition for a writ of certiorari should be held pending disposition of the petition in *United States v. United Scottish Insurance Co.*, No. 82- (filed Feb. 11, 1983), and then disposed of as appropriate.

Respectfully submitted.

REX E. LEE
Solicitor General

FEBRUARY 1983

APPENDIX A
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 81-5366
DC No. CV 76-0187-WPG

S.A. EMPRESA DE VIACAO AEREA RIO CRANDENSE
(VARIG AIRLINES), APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE.

No. 81-5399
DC CV 78-0914-WPG

EMMA ROSA MASCHER; ALFRED ROSA; GUIDO ROSA;
RAYMOND ROSA; BRUNO ROSA; CORIDO ROSA; AND
ERNEST ROSA, INDIVIDUALLY AND AS HEIRS AND
LEGATEES OF ELIO ROSA, DECEASED, ET AL.,
APPELLANTS,

v.

UNITED STATES OF AMERICA, APPELLEE.

Filed October 26, 1982

AMENDED OPINION

Appeal from the United States District Court
for the Central District of California
William P. Gray, District Judge, Presiding
Argued and submitted June 10, 1982

BEFORE: CHAMBERS, GOODWIN and PREGERSON,
Circuit Judges

GOODWIN, Circuit Judge

Plaintiffs sued the United States under the Federal
Tort Claims Act, 28 U.S.C. § 2671, *et seq.*, for the loss
of a Boeing 707 aircraft that crash landed after a lavato-

ry unit caught fire.¹ The Federal Aviation Administration (F.A.A.) had certified that the lavatory unit complied with F.A.A. fire protection standards. Varig alleged that the unit did not comply. The trial court granted the United States summary judgment on the grounds that the certification did not come within California's good samaritan rule and that, even if it did, liability was precluded by the misrepresentation and discretionary function exception clauses of the Federal Tort Claims Act.

On July 11, 1973, Varig Airlines Flight 820, a non-stop flight from Rio de Janeiro to Paris, was a few minutes from its scheduled landing at Orly Airport near Paris. Although the flight had progressed without incident, a passenger who used the restroom reported smoke in a lavatory. Within four to six minutes, a fire in the aft lavatories caused thick, black smoke to fill the cabin and cockpit. Because of the smoke, the crew and passengers could not see the exits or each other; the pilots could not see each other or any of the instruments.

The pilots then opened the sliding windows of the cockpit and put their heads out in order to make a crash landing in a field near the airport. The plane crash landed six minutes after the smoke had first been discovered. Of a total of 135 persons on board, ten crew members and one passenger survived. The rest died from asphyxiation or the effects of toxic gases.

The aircraft had been manufactured fifteen years earlier by Boeing Aircraft and had been sold to Seaboard Airlines which subsequently resold the plane to Varig Airlines. Before Boeing manufactured the plane,

¹ The individual plaintiffs are pursuing claims for the loss of life among the passengers. Varig's action against Boeing for damages for the loss of the aircraft was barred by the express waiver of tort liability contained in the original sales agreement of the aircraft in question and agreed to by Varig upon its purchase of the aircraft from an earlier buyer. See *S.A. Empresa, etc., v. Boeing Co.*, 641 F.2d 746 (9th Cir. 1981).

its designs, plans, specifications and performance data were inspected and certified as acceptable by the United States government.

Civil Air Regulation 4b.381(d) requires:

FIRE PROTECTION

"§ 4b.381 *Cabin interiors*. All compartments occupied or used by the crew or passengers shall comply with the following provisions.

* * * * *

"(d) All receptacles for used towels, papers, and waste shall be of fire-resistant material, and shall incorporate covers or other provisions for containing possible fires."

For purposes of summary judgment, we assume that the lavatory sink unit on the 707 contained flammable material, lacked a cover, and had large holes which made the compartment incapable of containing smoke or fire.²

Under the Federal Torts Claims Act, the government may be liable in tort only if a private individual would have been liable under "the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b). Here, the United States' inspection of the designs, plans, specifications and performance data of the 707 and certification of the plane all occurred in Los Angeles.

An individual inspecting and certifying aircraft design for safety in California would be judged by the rule set forth in Restatement (Second) Torts, §§ 323 and 324A. Therefore, the United States is to be judged under the same rule. *United Scottish Ins. Co. v. United States*, 614 F.2d 188 (1979), affirmed this day following remand, No. 81-5062, (9th Cir. 1982).

² *S.A. Empresa, etc. v. Walter Kidde & Co., Inc.*, No. 79-3720, (February 26, 1982, as amended June 23, 1982 (9th Cir.).

Under the Restatement rule, a defendant may be liable if it negligently performed a service either for the injured party or to another for the protection of the injured party. *United Scottish Insurance Co., supra; Ingham v. Eastern Airlines*, 373 F.2d 227 (2d Cir. 1967). Under the Restatement, this negligently performed service must have either increased the risk of injury to the injured person or have caused him to rely on proper performance of the service.

The United States claims that it was not performing a service and that, in any case, its actions did not increase the risk of injury or cause reliance on their proper performance. The United States contends it was performing a regulatory duty rather than a service and that, unlike an air traffic controller, an F.A.A. inspector is not engaged in operational activities and, therefore, owes no duty to those dependent on his performance.

The government cites *Clemente v. United States*, 567 F.2d 1140 (1st Cir. 1977), *cert. denied*, 435 U.S. 1006 (1978). Roberto Clemente was killed in the crash of a private plane in Puerto Rico. His widow sued the United States. She alleged that the F.A.A. was negligent in failing to inform the passengers that the plane was overweight and lacked a proper flight crew. Because only a local F.A.A. directive then required that "[c]lear indication of alleged illegal flight . . . be made known to flight crew and persons chartering the service," *id.* at 1143, n.3, and because there was no indication that anyone had ever relied upon the kind of warning the widow was asserting to be a governmental duty, the First Circuit held that there was no good Samaritan duty in the *Clemente* case.

In the instant case, Civil Air Regulation 4b.381(d) specifically requires waste receptacles to be made of fire-resistant material and to incorporate covers or other provisions for containing possible fires. A statute,

49 U.S.C. § 1421, requires that the F.A.A. conduct a comprehensive inspection for compliance with all safety regulations before a certificate of airworthiness will issue. Aircraft purchasers rely upon these inspections.

The United States, through the F.A.A., has voluntarily undertaken the inspection and certification of all civilian aircraft. The Federal Aviation Act of 1958, 49 U.S.C. § 1301, *et seq.*, requires the F.A.A. "to promote safety of flight of civil aircraft in air commerce" and to perform its duties "in such manner as will best tend to reduce or eliminate the possibility, or recurrence of accidents in air transportation . . ." 49 U.S.C. § 1421. The Act provides for a mandatory certification procedure, 49 U.S.C. § 1423, and the F.A.A. has established design criteria that every aircraft must meet before being certified for flight.

Members of the flying public may not know the specific contents of F.A.A. regulations. There is general knowledge, however, that regulations designed to insure optimum safety exist and that the United States inspects each aircraft for compliance. The public knows that the government "grounds" aircraft until questions about safety are resolved. The United States should expect that members of the public will rely on the proper performance by the F.A.A. of its duty to inspect and certify. Under California law, a private person inspecting and certifying aircraft for airworthiness would be liable for negligent inspection under that state's good samaritan rule. It follows that the United States also falls within the rule. Even without reference to the good samaritan rule, we have indicated that an action against the government will lie in a negligent inspection and certification case. *Arney v. United States*, 479 F.2d 653, 661 (9th Cir. 1973).

The United States contends that if it comes under this rule it will be liable for every accident resulting from an activity subject to government safety regula-

tions. This argument is not persuasive. The United States will be liable only when injury has resulted from the negligent performance of its duty. The voluntary assumption of the inspection and certification function carries with it the duty to inspect and certify with reasonable care.

Under the Federal Tort Claims Act, the United States is not subject to liability for "[a]ny claim arising out of . . . misrepresentation . . ." 28 U.S.C. § 2680(h). The government contends that plaintiff's claims are actually actions for negligent misrepresentation.

Plaintiffs' claims, however, arise from the negligence of the inspection rather than from any ensuing misrepresentation contained in the resultant certificate. See *United Scottish Insurance Co. v. United States*, *supra*. The certification merely reports results of the negligent inspection. *Neal v. Bergland*, 646 F2d 1178, 1183-84 (7th Cir. 1981), *cert. granted*, 102 U.S. 2267 (1982); *In Re Air Crash Disaster Near Silver Plume, Colorado*, 445 F. Supp. 384, 409 (D.Kan. 1977). Thus, the United States is not protected from liability by the misrepresentation exception.

The United States also argues that the discretionary function exception of the Federal Tort Claims Act precludes liability. The discretionary function exception exempts the United States from liability under the Federal Tort Claims Act for claims "based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty . . ." 28 U.S.C. § 2680(a).

The discretionary function exemption was primarily intended to preclude tort claims arising from decisions by executives or administrators when such decisions require policy choices. *Dalehite v. United States*, 346 U.S. 15, 35-36 (1953).

The kind of discretion contemplated by the exemption clause does not exist in certifying compliance with

F.A.A. safety regulations. A proper inspection will discover facts. The facts will show either compliance or noncompliance. Aircraft must comply with the regulations in order to be certified. The government conceded in a leading case on the discretionary function exemption, *Indian Towing Co. v. United States*, 350 U.S. 61, 64-65 (1955), that the exemption did not apply to lighthouse keepers, whose negligent inspection of lighthouse facilities caused a ship to run aground. The duties undertaken by F.A.A. inspectors are more like those of the lighthouse keepers in *Indian Towing* than those of the cabinet level secretaries in *Dalehite*. The United States is not protected from liability under the discretionary function exception to the Federal Tort Claims Act in this case.

Reversed and remanded.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Civil Action No. CV-76-0187-WPG

S.A. EMPRESA DE VIACAO AEREA RIO GRANDENSE
(VARIG AIRLINES), PLAINTIFF,

v.

UNITED STATES OF AMERICA, DEFENDANT.

Civil Action No. CV-78-0914-WPG

EMMA ROSA MASCHER, ALFRED ROSA, GUIDO ROSA,
RAYMOND ROSA, BRUNO ROSA, CORIDO ROSA, AND
ERNEST ROSA, INDIVIDUALLY AND AS HEIRS AND
LEGATEES OF ELIO ROSA, DECEASED, ET AL.,
PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT.

Filed March 6, 1981

FINDINGS OF FACT

1. These actions arise out of the crash of a Boeing 707 aircraft on July 11, 1973, near Paris, France.
2. Plaintiffs bring these actions under the Federal Tort Claims Act, 28 U.S.C. §§ 1346 *et seq.* for damages allegedly caused by negligence on the part of Defendant, United States of America in the inspection and certification of the original Boeing 707 aircraft.
3. Plaintiff, VARIG Airlines, is a large commercial Brazilian airline. VARIG seeks recovery for the hull

loss; no recovery is sought for personal injury, death or loss of other property.

4. Plaintiffs Mascher, *et al.*, are survivors of sixty-two passengers who died in the subject accident.

4. The subject Boeing 707 aircraft was designed, manufactured, tested, inspected and assembled by the Boeing Company.

6. The Defendant, United States of America, through the Civil Aeronautics Agency initially issued a type certificate for the Boeing 707 aircraft in 1958 in Los Angeles, California, pursuant to the submission of designs by the Boeing Company.

7. The subject aircraft was sold by the manufacturer, the Boeing Company, to Seaboard Airlines who subsequently sold the aircraft to VARIG Airlines.

8. The United States of America, through its employees or through a designated representative, inspected the designs, plans, specifications and performance data of the original Boeing 707 aircraft in 1958 before a type certificate was issued.

9. Prior to the accident, neither the Boeing Company, Seaboard Airlines or VARIG Airlines ever notified the United States of America that there were any deficiencies in any lavatory waste container.

10. The Defendant, United States of America, through its agents and employees did not perform any physical act to cause the fire aboard the subject aircraft.

11. The United States' inspection and certification of the aircraft were regulatory functions, not "operational" services like air traffic control.

23. [*Sic*] The United States of America, in performance of its regulatory functions in issuing a type certificate, did not undertake to insure the safety of the subject aircraft.

15. The United States of America did not design, assemble, manufacture, repair, alter, own or operate the subject aircraft at any time.

16. No act or omission of the United States of America, through its employees and agents, was a proximate cause on contributing [Sic] to the crash of the Boeing 707 aircraft.

17. There was no negligence on the part of the United States of America or any of its employees that was a proximate cause of this accident.

To the extent any findings of fact are found to be conclusions of law, the Court will deem them to be conclusions of law.

CONCLUSIONS OF LAW

1. This is a suit under the Federal Tort Claims Act and therefore the law of California, the place where the alleged acts or omissions occurred, is applicable. 28 U.S.C. § 1346(b). *Richards v. United States*, 369 U.S. 1 (1962); 28 U.S.C. §§ 1346(b), 2674.

2. Under the Federal Tort Claims Act, Courts may not determine governmental liability without considering the liability of a private person in "like circumstances." 28 U.S.C. § 1346(b); *Roberson v. United States*, 382 F.2d 714 (9th Cir. 1967); *United Scottish Ins. Co. v. United States*, 614 F.2d 188 (9th Cir. 1979); *Blessing v. United States*, 447 F.Supp. 460 (E.D. Pa. 1978).

3. California law does not recognize an actionable tort duty in private persons or governmental agencies for inspection and certification activities. California Government Code § 818.6. *In Re Pago Pago Air Crash Disaster of Jan. 30, 1974*, MDL 176, U.S. Motion for Partial Summary Judgment (C.D. Calif. Jan. 6, 1978).

4. The FAA's inspection and certification of the Boeing 707 aircraft does not give rise to an actionable duty in tort under California law. California Government

Code § 818.6. *In Re Pago Pago Air Crash Disaster of Jan. 30, 1974*, MDL 176, U.S. Motion for Partial Summary Judgment (C.D. Calif., Jan. 6, 1978); *United Scottish Ins. Co. v. United States*, 614 F.2d 188 (9th Cir. 1979).

5. Although FAA regulations establish safety standards and provide for inspection to assure compliance with such standards, the benefits of those governmental acts flow to the general public at large and not to any individual so as to render the United States liable for negligence in their performance. *Roberson v. United States*, 382 F.2d 714 (9th Cir. 1967); *Clemente v. United States*, 567 F.2d 1140 (1st Cir. 1977), *cert. denied*, 435 U.S. 1006 (1978); *People of State of Illinois v. Maryland Casualty*, 132 F.2d 830 (7th Cir. 1942).

6. The United States, by undertaking to "promote air safety" did not undertake a legal duty to Plaintiffs herein that is actionable in tort under the Federal Tort Claims Act. *Laird v. Nelms*, 406 U.S. 797 (1972); *Kirk v. United States*, 270 F.2d 110 (9th Cir. 1954); *Clemente v. United States*, 567 F.2d 1140 (1st Cir. 1977), *cert. denied*, 435 U.S. 1006 (1978).

7. The United States of America, by inspecting and certificating the Boeing 707 aircraft, did not undertake a "Good Samaritan" duty owed to Plaintiffs herein under California law. *Thompson v. United States*, 592 F.2d 1104 (9th Cir. 1979); *Wright v. Arcade School District*, 230 CA 2d 272 (1964); *Clemente v. United States*, 567 F.2d 1140 (1st Cir. 1977), *cert. denied*, 435 U.S. 1006 (1978).

8. The Federal Aviation Act of 1958 does not impose an actionable tort duty upon the FAA's inspection and enforcement personnel: *Clemente v. United States*, 567 F.2d 1140 (1st Cir. 1977), *cert. denied*, 435 U.S. 1006 (1978); *Rogers v. Ray Gardiner Flying Service, Inc.*, 435 F.2d 1389 (5th Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971).

9. The United States of America owed no duty in regard to its inspection and certification of the aircraft under the Federal Aviation Act, the Federal Tort Claims Act, California law or common law to Plaintiffs herein. *Clemente v. United States*, 567 F.2d 1140 (1st Cir. 1977), *cert. denied*, 435 U.S. 1006 (1978); *Harmsen v. Smith*, 586 F.2d 156 (9th Cir. 1978); *Thompson v. United States*, 592 F.2d 1104 (9th Cir. 1979).

10. By conducting the inspection of the aircraft, the United States of America did not relieve VARIG, the owner and operator of the aircraft of its primary responsibility for the safe operation of the aircraft. *United Scottish Ins. Co. v. United States*, 614 F.2d 188 (9th Cir. 1979); *Mercer v. United States*, 460 F.Supp. 329 (S.D. Ohio 1978); 14 C.F.R. § 91.3.

11. Plaintiffs' allegations of the United States' failure to ensure that the Boeing Company complied with the applicable regulations is jurisdictionally barred by the discretionary function exception to the Federal Tort Claims Act. 28 U.S.C. § 2680(a); *Dalehite v. United States*, 346 U.S. 15 (1953); *In Re Franklin National Bank*, 478 F.Supp. 210 (E.D. N.Y. 1979); *Maynard v. United States*, 430 F.2d 1264 (9th Cir. 1970).

12. Plaintiffs' allegations of negligent inspection and testing, failure to warn, failure to issue airworthiness directives and failure to issue adequate minimum standards are jurisdictionally barred by the discretionary function and the misrepresentation exceptions to the Federal Tort Claims Act, 28 U.S.C. § 2680(a) and (h). *Dalehite v. United States*, 346 U.S. 15 (1953); *United States v. Neustadt*, 366 U.S. 696 (1961); *Marival, Inc. v. Planes, Inc.*, 306 F.Supp. 855 (N.D. Ga. 1969).

13. Plaintiffs' allegations of negligent issuance of a type certificate to the Boeing 707 aircraft are jurisdictionally barred by the discretionary function and misrepresentation exceptions to the Federal Tort Claims Act, 28 U.S.C. § 2680(a) and (h). *Lloyd v. Cessna Air-*

craft Co., 429 F.Supp. 181 (E.D. Tenn. 1977); *Clark v. United States*, 218 F.2d 446 (9th Cir. 1954); *Dalehite v. United States*, 346 U.S. 15 (1953).

14. Even when the United States' misrepresentation is an implied but false assurance to the public that it will abide by its own rules and regulations, the claim is barred by the misrepresentation exception. *Scanwell Laboratories, Inc. v. Thomas*, 521 F.2d 941 (D.C. Cir. 1975); *cert. denied*, 425 U.S. 910 (1975).

15. The FAA, by its inspection and issuance of a Type Certificate, did not undertake to warrant or guarantee the safety of the subject aircraft. *Thompson v. United States*, 592 F.2d 1104 (9th Cir. 1979); *Marival, Inc. v. Planes, Inc.*, 306 F.Supp. 855 (N.D. Ga. 1969).

16. The duties of the FAA inspectors in the inspection and certification of the Boeing 707 aircraft were not "operational" duties like air traffic control services and therefore no duty is created under the "Good Samaritan" doctrine. *United Scottish Ins. Co. v. United States*, 614 F.2d 188 (9th Cir. 1979); *Clemente v. United States*, 567 F.2d 1140 (1st Cir. 1977); *cert. denied*, 435 U.S. 1006 (1978).

17. No triable issue of fact exists for the purposes of the United States' Motion for Summary Judgment.

18. Summary judgment will be granted in favor of the Defendant, United States of America.

To the extent that any conclusions of law are found to be findings of fact, the Court will deem them to be findings of fact.

WHEREFORE, Defendant, United States of America, is entitled to summary judgment against Plaintiffs herein on the issue of liability as a matter of law.

DATED this 6 day of March, 1980.

/s/ WILLIAM P. GRAY

United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Civil Action No. CV-76-0187-WPG

S.A. EMPRESA DE VIACAO AEREA RIO GRANDENSE
(VARIG AIRLINES), PLAINTIFF,

v.

UNITED STATES OF AMERICA, DEFENDANT.

Civil Action No. CV-78-0914-WPG

EMMA ROSA MASCHER, ALFRED ROSA, GUIDO ROSA,
RAYMOND ROSA, BRUNO ROSA, CORIDO ROSA, AND
ERNEST ROSA, INDIVIDUALLY AND AS HEIRS AND
LEGATEES OF ELIO ROSA, DECEASED, ET AL.,
PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT.

Filed March 6, 1981

ORDER FOR ENTRY OF SUMMARY JUDGMENT
IN FAVOR OF DEFENDANT, UNITED STATES OF
AMERICA AND AGAINST PLAINTIFFS VARIG AND
MASCHER, *ET AL*

The Motion of Defendant, United States of America, for an Order for Entry of Summary Judgment in Favor of Defendant, United States of America, was regularly heard on January 26, 1981. All parties were represented by counsel. After full consideration of the moving and responding papers, all supporting papers and oral argument of counsel, it appears and the Court finds that Defendant, United States of America, has shown

by admissible evidence and reasonable inferences from the evidence that the action has no merit as against Defendant, United States of America, and Plaintiffs, VARIG Airlines and Mascher, *et al*, have presented no triable issue of fact.

IT IS ORDERED that judgment be entered in accordance with this Order in favor of the United States of America and against the Plaintiffs herein as prayed for in the answers.

DATED: March 6, 1981

/s/ WILLIAM P. GRAY

United States District Judge

APPENDIX D
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 81-5366
DC CV 76-0187 WPG

S.A. EMPRESA DE VIACAO AEREA RIO GRANDENSE
(VARIG AIRLINES), APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE.

APPEAL from the United States District Court for
the Central District of California

THIS CAUSE came on to be heard on the Transcript of
the Record from the United States District Court for
the Central District of California and was duly
submitted.

ON CONSIDERATION WHEREOF, It is now here or-
dered and adjudged by this Court, that the judgment of
the said District Court in this Cause be, and hereby is
reversed and remanded.

Filed and entered October 8, 1982

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 81-5399
DC CV 78-914 WPG

EMMA ROSA MASCHER; ALFRED ROSA; GUIDO ROSA;
RAYMOND ROSA; BRUNO ROSA; CORIDO ROSA; AND
ERNEST ROSA, INDIVIDUALLY AND AS HEIRS AND
LEGATEES OF ELIO ROSA, DECEASED, ET AL.,
PLAINTIFFS-APPELLANTS,

v.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

APPEAL from the United States District Court for
the Central District of California

THIS CAUSE came on to be heard on the Transcript of
the Record from the United States District Court for
the Central District of California and was duly
submitted.

ON CONSIDERATION WHEREOF, It is now here or-
dered and adjudged by this Court, that the judgment of
the said District Court in this Cause be, and hereby is
reversed and remanded.

Filed and entered October 26, 1982

APPENDIX F

EMMA ROSA MASCHER, ALFRED ROSA, GUIDO ROSA, RAYMOND ROSA, BRUNO ROSA, CORIDO ROSA, and ERNEST ROSA, individually and as heirs and legatees of ELIO ROSA, deceased; HONOR CHRISTINE BROGAN, individually and as next friend of THOMAS JAMES PATRICK BROGAN, a minor, and both as heirs of DIARMUID JOHN BROGAN, deceased; CLAUDE MARIE-JOSEPHE ARNAUD LAVAUD, individually and as next friend of SOPHIE CLAUDE MARIE LAVAUD, and PHILIPPE JEAN MARIE LAVAUD, minors, and BRIGITTE LAVAUD PASTEYER, individually, CATHERINE CHRISTINANE ELISABETH LAVAUD, individually, and FRANCOIS JEROME GABRIEL LAVAUD, individually, and all as heirs of YVON ANDRE JEROME LOUIS LAVAUD, deceased, MANDANJEET SINGH and SUMITRA SINGH, co-executors of the estate of RANJEETA PRITHI SINGH, as heir of KUMARI REETA PRITHI SINGH, deceased; BARATELLA DIRCE DAINELLI, ALBERTINA DAINELLI, UGO DAINELLI, ORNELLA DAINELLI ALLEGRI, REGINA DAINELLI PISANO, individually and as heirs of LORENZO DAINELLI, deceased; ZELIA RIVETTO GRIGLIO and SERGIO GRIGLIO, individually and as heirs of LUIGI GRIGLIO, deceased; FRANCESCA GRIGLIO BONGIOVANNI, FERNANDA BONGIOVANNI, and ALBERTO BONGIOVANNI, individually and as heirs of GUISEPPE BONGIOVANNI, deceased; UBALDO GAETANO ZANARDI, individually and as heir and legatee of YOLE ZANARDI ROSA, deceased; MARIA LUCIA BRUDER, individually and as next friend of THOMAS BRUDER and GEORGIA BRUDER, minors, and all as heirs of JOERG BRUDER, deceased; HALIM

AIDAR JR., individually and as personal representative of HALIM AIDAR and LEILA RAHAL BERRIEL AIDAR, deceased, and CRISTINA BERRIEL AIDAR and CLAUDIA BERRIEL AIDAR, individually, and all as heirs of HALIM AIDAR and LEILA RAHAL BERRIEL AIDAR, deceased; ANA LUCIA TEIXEIRA DE ANDRADE FIGUEIRA, individually and as heir of JOAO PAULO DE ANDRADE FIGUEIRA and FLORISBELA TEIXEIRA DA SILVA DE ANDRADE FIGUEIRA, deceased; ZULMIRA DE CUNHA HONEM DE MELO, AMALIA DA CUNHA E OLIVEIRA, TEREZA CUNHA DE SOUZA ANDRADE, ALEXANDRIANA DE OLIVIERA DALMASO, ELIO AFONSO DA CUNA, SELENE DA CUNHA MORAES, EROS AFONSO DA CUNHA, TEREZINHA AFONSO DA CUNHA, and ANTONIO AFONSO DA CUNHA, individually and as heirs of MARIA DA CUNHA E. OLIVEIRA, deceased; GENI NILSA DIEFENTHALER, IGNES DIEFENTHALER, CARLA DIEFENTHALER, AGNES DIEFENTHALER and MARCOS DIEFENTHALER, all as heirs of CARLOS DIEFENTHALER NETO, deceased; MARIENNE CHABERAT MAS, CHRISTIAN MAS, and JOELLE MAS GROS, individually and as heirs of PIERRE MAS, deceased; ANNA OLENE GUNBORG HENRIETTA BERNSTROM FAUCONNIER, individually and as next friend of PETER ELIE FREDERICK FAUCONNIER and MATHIAS ALEXIS YVON FAUCONNIER, minors and all as heirs of JEAN ELIE ROGER FAUCONNIER, deceased; PIERRE JEAN FRANCOIS SARDA, MICHEL FRANCIS JEAN SARDA, ALAIN JEAN JACQUES SARDA, and NICOLE MARIE LAURENCE SARDA DE CLAVIERE D'HUST, individually and as heirs of FRANCOIS SARDA, deceased; MADDY MARIE

GABRIELLE ROSEANE DIETRICH AUFRERE DE LA PREUGNE, SOLANGE AUFRERE DE LA PREUGNE, ISABELLE AUFRERE DE LA PREUGNE, and ANNE MARIE AUFRERE DE LA PREUGNE, individually and as heirs of BERNARD FELIX MARIE ANTOINE AUFRERE DE LA PREUGNE, deceased; LUCIENNE DANDO TARDIF, GERARD TARDIF, and CLAIRE TARDIF MARETTE, individually and as heirs of ROBERT TARDIF, deceased; JACQUELINE DUBOIS FARDEL, individually and as next friend of DORIS-MARIE FARDEL, a minor, and NICOLE-SUZANNE FARDEL, individually and all as heirs of JACQUES FARDEL, deceased; DANIELLE YVONNE COJAN GHORBANIAN, individually and as next friend of PASCAL KARIM GHORBANIAN and PHILIPPE GUIVE GHORBANIAN, minors, and all as heirs of JALIL GHORBANIAN, deceased; MARIE SIEBERTSCHIRKY, VALENTIN SIEBER, HEDWIG GRAF-SIEBER, and ROSE-MARIE SIEBER, individually and as heirs of JOHANN JAKOB SIEBER, deceased; MARIA NEUSA CONSONI GUIMARAES, individually and as next friend of ANA LUIZA CONSONI GUIMARAES, SILVIA CONSONI GUIMARAES, and LUIZ HUMERTO CONSONI GUIMARAES, minors, and ELZA HELENA CONSONI GUIMARES, and CRISTINA CONSONI GUIMARAES, individually, and all as heirs of LUIZ HUMBERTO CUNHA GUIMARES, deceased; CHARLOTTE AUGUSTE LUISE PRANGE DANZBERG, individually and as heir of HANELORE DANZBERG, deceased; EGON ERNY KIRST and NELLY EBLING KIRST, individually and as heirs of GASTON RONALDO KIRST, deceased; MARIA REGINATO PAGANELLA, individually and as heir of NIVALDO PAGANELLA KIRST, deceased; CLARA ZIMMERMAN DE PELUFFO, individually and as

next friend of SANTIAGO PELUFFO, VERONICA PELUFFO, RODRIGO PELUFFO, AGUSTINA PELUFFO, and JOSEFINA PELUFFO, minors, and all as heirs of HORACIO RODRIGO PELUFFO, deceased; ENILDA FERNANDEZ DE SORTINO, individually and as heir of VICTOR HUGO FERNANDEZ, deceased; SUZANNE MARIE-LOUISE SEVE JACQUIOT, individually and as next friend of DENIS ROLAND JACQUIOT and CHARLOTTE JACQUIOT, minors, and CHRISTOPHE LUC MARC JACQUOIT, individually, and all as heirs of NOEL MARIUS JACQUIOT, deceased; FELIX RENATO GUTIERREZ ACUNA and MARIA MERCEDES GUITIERREZ ACUNA, individually and as heirs of ELVIRA ACUNA RIQUELME, deceased; MARIA LUIZA PEREIRA DE ALMEIDA LEITE RIBIERO, individually, PATRICIA LEITE RIBIERO, individually, and MARIA FERNANDA LEITE RIBIERO, individually, and all as heirs of CELSO LEITE RIBIERO FILHO, deceased; MARINA MENEZES DE OLIVEIRA CARVALHO, individually and as next friend of SERGIO MENEZES DE OLIVERIA CARVALHO, a minor, and all as heirs of PLINIO JOSE DE CARVALHO FILHO and ISABELLA MENEZES DE OLIVEIRA CARVALHO, deceased; MAGDALENA JUANA JULIA BAPAUME DE FOVILLE DE AUGE, ENRIQUE BERNARDO AUGE, and JUAN CLAUDIO AUGE, individually and as heirs of ALBERTO NORBERTO AUGE, deceased; MYRIAM COLLIER DE LAMARE, GUILHERME COLLIER DE LAMARE and CLAUDIA COLLIER DE LAMARE, individually and as heirs of JULIO BARBOSA DE LAMARE, deceased; JOSE NARCISO DA FONSECA E SILVA and ISIS SOUZA DA FONSECA E SILVA, individually and as heirs of JOSE NARCISO DA FONSECA E SILVA, deceased; GERALDO GUOVEA CAR-

RAZEDO and CELINA CORREA CARRAZEDO, individually and as heirs of SOLANGE CARRAZEDO DA FONSECA E SILVA, deceased; CLAUDIA DE SOUZA WEISS, individually and as next friend of FABIA DE SOUZA SCAVONE, a minor, and both as heirs of ANTONIO CARLOS SCAVONE, deceased, and DAYSE PULICE, as next friend of ALEXEI SCAVONE, a minor and heir of ANTONIO CARLOS SCAVONE, deceased; WALKIRIA TOLEZANO DI VIZIO, individually and as next friend of EDUARDO DI VIZIO, minor, and CLAUDIA TOLEZANO DI VIZIO and SILVANA DI VIZIO, individually, and all as heirs of EGIDIO DI VIZIO, deceased; PAULINA ZILBERMAN KNIJNIK, individually and as heir of ELIZETE KNIJNIK, deceased; AMALIA VERON YGLESIAS, individually and as next friend of RAUL YGLESIAS and ELIS APARECIDA YGLESIAS, minors, and all as heirs of JUAN CARLOS YGLESIAS, deceased; MOISE JEAN-PAUL DAURIER, LOUIS DAURIER, JEANNE DAURIER, ANDRE DAURIER, ALBERT DAURIER, GEORGES DAURIER, VICTOR DAURIER, MARIE DAURIER, YVETTE DAURIER MEYER, HELENE DAURIER BARNAUD, and PAULETTE DAURIER HARO, individually and as heirs of SIMONE DAURIER BODITCH, ANNE MARIE BODITCH, and JEANINE EVELYNE BODITCH, deceased; HILDEGARD SEVERIN JUESTEN, DR. ULRICH JUESTEN, and DR. WOLFGANG JUESTEN, individually and as heirs of KURT FRIEDRICH OTTO JUESTEN, deceased; NANCY PALLETA DOS SANTOS, individually and as next friend of AIRTON PALLETA DOS SANTOS, a minor, and AUGUSTINHO DOS SANTOS JUNIOR, individually, and all as heirs of AUGUSTINHO DOS SANTOS, deceased; LUCIANA ROSANGELA MERLO in ZAVARONI, individually and as next friend of

FRANCESCA ZAVARONI, a minor, and as heirs of LUCIANO ZAVARONI, deceased; MONIKA COLLI, individually and as next friend of SVEN COLLI and TANJA COLLI, minors, and all as heirs of PETER COLLI, deceased; FRANCISCA ARLITA BARBOSA QUINDERE, individually and as next friend of RENATA BARBOSA QUINDERE and ADRIANA BARBOSA QUINDERE, minors, and CRISTINA BARBOSA QUINDERE, individually, LUCINA BARBOSA QUINDERE, individually, and PAULO BARBOSA QUINDERE, individually, and all as heirs of CLAYRTON LUIZ GARCIA QUINDERE, deceased; CORNELIA KOEMAN-NIEUWEBOER, KLAAS EVERT KOEMAN, MAARTJE GRIETJE KOEMAN and MARTIN DIK KOEMAN, individually and as heirs of MEINDERT KOEMAN, deceased; LUIZ TIELLET, RIVADAVIA TIELLET, ARISTOTELINO TIELLET, ELOAH TIELLET DA SILVA, LUIZA DE LOURDES TIELLET OLIVIERA, HILDA ALVARES, CELANIRA TIELLET BORGES, and THEREZINHA TIELLET BUENO, individually and as heirs of WILSON MIORIM TIELLET, ANTONIO AUGUSTO TIELLET and JULIO MARIO TIELLET, deceased; DOLORES VELLOSO VIANNA, individually and as heir of MARINA VIANNA TIELLET, ANTONIO AUGUSTO TIELLET, and JULIO MARIO TIELLET, deceased; WALDEMAR MARTINS FERREIRA FILHO, ANNA MARIA MARTINS FERREIRA, MARIA ANTONIETA MARTINS FERREIRA, and WALDEMAR FERREIRA NETTO, individually and all as heirs of ANNA MARIA MALTA CARDOZO MARTINS FERREIRA, deceased; MARIA ISABEL MALTA CARDOZO BARRETTO PRADO, EVANGELINA MALTA CARDOZO JUNQUEIRA DE AQUINO, CARLOTA JOSEPHINA MALTA CARDOZO DOS REIS BOTO,

FRANCISCO MALTA CARDOZO NETO, ANNA MARIA MARTINS FERREIRA, MARIA ANTONIETA MARTINS FERREIRA, WALDEMAR FERREIRA NETO, individually and all as heirs of FRANCISCO MALTA CARDOZO and EVANGELINA SAMPAIO VIDAL MALTA CARDOZO, deceased.